in view of the authorities, compel him to eject a tenant as this would require the doing of an act which the court can no longer control.

I have therefore come to the conclusion that this is not a proper case for an interlocutory injunction. The motion is therefore dismissed. Costs will be costs in the cause.

Motion dismissed.

Solicitors: *R. C. H. Lim & Co.; Drew & Napier.*

IN RE AN ADVOCATE & SOLICITOR

[O.C.J. (Wee Chong Jin C.J., Winslow & Kulasekaram JJ.) April 14, 1968]

[Singapore — Originating Summons No. 144 of 1967]

Advocates & Solicitors — Professional misconduct — Alleged false statements made to obtain costs — Legal Profession Act, 1966, s. 87 (2)(b).

The respondent acted as solicitor for the plaintiffs in an action and had obtained judgment against the defendants. As counsel for the plaintiffs, the respondent proceeded to issue a writ of seizure and sale to enforce the judgment. An application by the defendants to have the writ set aside was dismissed by Choor Singh J. The defendants appealed against the judgment in the main action and the decision of Choor Singh J.

Subsequently the defendants instructed their solicitors to withdraw the appeals. The instruction was communicated by letter to the respondent for the purpose of obtaining his consent to the withdrawal of the appeals. The respondent replied stating his refusal to give his unconditional consent. Consequently an application for withdrawal of the appeals was made before the Federal Court.

During the hearing the respondent was questioned by the court as to whether he had earlier been asked to consent to the withdrawal of the appeals. There was a conflict of evidence as to what the reply was. According to counsel for the defendants the respondent replied to the effect that no letter was written to him. The respondent's version was that he had merely confirmed a negative reply of the defendants' counsel. In the circumstances, costs were awarded to the plaintiffs/appellants.

As a result of a complaint made by the defendants' solicitors, a disciplinary committee was set up under section 27 of the Advocates and Solicitors Ordinance to inquire into whether the respondent had made a false statement to the Federal Court for the purpose of obtaining costs which he was otherwise not entitled to. The committee came to the conclusion that the respondent "had been guilty of grossly improper conduct in the discharge of his professional duty in that he had wilfully and rashly misled the court." Upon an order of court requiring the respondent to show cause why he should not be dealt with under section 87 of the Legal Profession Act, 1966,

Held: having regard to the explanations made by the respondent before the disciplinary committee and the ambiguous nature of the committee's findings, the court was not satisfied that there was sufficient evidence to show that the respondent had wilfully misled the Federal Court into believing that he had not been notified of the defendants' intention to withdraw the two appeals.

ORIGINATING SUMMONS.

J. B. Jeyaretnam for the Advocates and Solicitors Society.

M. Karthigesu for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): The respondent, an advocate and solicitor of this court, was by an order of court dated 28th July 1967 ordered to show cause before us why he should not be dealt with under section 87 of the Legal Profession Act 1966, the material provisions of which are as follows:—

> "87 (1) All advocates and solicitors shall be subject to the control of the High Court and shall be liable on due cause shown to be struck off the Roll or suspended from practice for any period not exceeding two years or censured.
>
> (2) Such due cause may be shown by proof that such person —
>
> (b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of breach of any rule or usage or conduct made by the Council under the provisions of this Act as in the opinion of the court amounts to improper conduct or practice as an advocate and solicitor;".

The background facts are these. The respondent practiced under the firm name of J.T.C.Y. & Co. His firm acted as solicitors for United Investment & Finance Ltd. the plaintiffs in an action against Universal Service Agency for whom the firm of Wee Tin Teck & Co. acted as solicitors. The plaintiff company obtained judgment on the 7th April 1965 against the defendant firm for $1,832.13 and costs to be taxed.

After judgment had gone against them, the defendant firm instructed the solicitor's firm of Pillai & Co. to act for them in the matter in place of Wee Tin Teck & Co. and a notice of change of solicitors was filed on the 13th April 1965 and a copy served on J.T.C.Y. & Co.

Pillai & Co. filed a notice of appeal against the judgment on the 15th April 1965, but, prior to that date, had been in correspondence with J.T.C.Y. & Co. offering to forward the amount of the judgment to the latter on the latter's undertaking to refund the same should the defendant firm succeed in the appeal. This offer was rejected.

Instead of paying the amount of the judgment, the defendant firm, through their solicitors, paid it into court on the 19th April 1965 and gave notice of this payment in to J.T.C.Y. & Co., who meanwhile proceeded to have their costs in the action taxed in the sum of $1,911.95 on the 11th May 1965. The following day, 12th May, they wrote to Pillai & Co. demanding payment from the defendant firm of the judgment sum and the taxed costs within four days or otherwise execution would be levied without further notice. The defendant firm's reply to this demand was

to pay the amount allowed on taxation into court on the 20th May 1965.

The same day J.T.C.Y. & Co., as solicitors for the plaintiff company, applied for and obtained the issue of a writ of seizure and sale. Four days later the defendant firm applied by way of summons-in-chambers to the High Court to set aside the writ of seizure and sale and for the release of its property which had been seized by the Sheriff under the writ of seizure and sale.

This application was heard the same day by Choor Singh J. who dismissed it with costs to be taxed. The defendant firm, however, continued with its efforts to prevent the judgment sum and taxed costs reaching the hands of the plaintiff company, by means of a motion before the High Court dated 31st May 1965 asking for an order to stay execution and other proceedings upon the judgment pending the disposal of the appeal or alternatively for an order that the judgment sum and the amount of the taxed costs be paid out of court to the plaintiff company or its solicitors upon the undertaking of the solicitors for the plaintiff company to refund the said sums in the event of the defendant firm's appeal to the Federal Court being allowed. The motion was heard by Buttrose J. on the 7th June 1965 and it was ordered that execution upon the judgment be stayed pending disposal of the appeal therefrom, that the sums paid into court do remain in court pending disposal of the said appeal, and it was ordered that the property of the defendant firm seized under the writ of seizure and sale be released forthwith and it was lastly ordered that the plaintiff company do pay to the defendant firm costs of the motion, such costs to be taxed.

The plaintiff company on the 24th June 1965 filed a notice of appeal against the decision of Buttrose J. Similarly the defendant firm filed a notice of appeal against the decision of Choor Singh J.

The position therefore was that by the end of June 1965 there were three appeals to the Federal Court all arising out of the original action by the plaintiff company against the defendant firm. Two of these appeals were by the defendant firm and the other by plaintiff company.

On the 12th July 1965, Pillai & Co. the solicitors for the defendant firm wrote a letter to J.T.C.Y. & Co., the solicitor for the plaintiff company in the following terms:—

"We have been instructed by our clients Universal Service Agency (sued as a firm) to withdraw the above appeals and to enquire whether you will consent to the intended withdrawal of the said two appeals.

On hearing from you, we intend to file notice of withdrawal with your consent endorsed thereon.

An early reply would be very much appreciated."

To this letter J.T.C.Y. & Co. (it is not in dispute that this letter was written by the respondent in the present proceedings) replied the following day i.e. 13th July 1965 as follows:—

"We have your letter dated the 12th July, 1965.

You will agree with us that our clients cannot possibly consent to your clients' intended withdrawal of their appeal Nos. 33 and 48 of 1965 having regard to the fact that our clients' appeal No. 55 of 1965 is still pending. Our clients have no intention whatsoever to withdraw their appeal.

However, in order to save unnecessary costs and expenses, our clients are prepared to give their consent upon the following terms and conditions:—

(1) That the judgment and the order of court against which your clients appeal must stand, i.e. the amount of the judgment debt and taxed costs must be paid to us by your clients.

(2) That we are to proceed to have our bill of costs taxed under the order of court made by Mr. Justice Choor Singh for payment by your clients.

(3) That your clients must refund to our clients the sum of $383.40 being watchmen wages etc. incurred in respect of the writ of seizure and sale herein.

(4) That your clients must waive the costs awarded against our clients under the order of court made by Mr. Justice Buttrose whose order is the subject of our clients' appeal. Instead your clients must pay us the sum of $600 being the costs incurred in respect of the motion for stay of execution. Your clients should also consent to the withdrawal of our clients' appeal each party paying its own costs.

(5) That the deposits lodged into court as security for costs be paid out to the respective appellants.

(6) That your clients must pay our clients the sum of $500 being the costs incurred in respect of all the three appeals.

If the above terms and conditions are acceptable to your clients, kindly send us your clients' cheque for the sum of $5,227.42 being the total of the amounts referred to in items (1), (3), (4) and (6) above. Our clients will not signify their consent to the motion of withdrawal unless we have received the sum of $5,227.42. We shall then of course send you the notice of withdrawal of our clients' appeal for your clients' consent to be endorsed thereon.

Kindly note that our clients' offer will remain open until noon on Saturday the 17th July, 1965. If no acceptance is forthcoming by that time, our clients' offer will automatically be withdrawn and our clients' appeal will proceed accordingly."

In reply, Pillai & Co. on the 15th July 1965 rejected the terms set out in the letter of the 13th July 1965 but agreed to terms (1) and (5), "all other costs to be waived and borne by each party". Thereafter followed three further letters, two from J.T.C.Y. & Co. and one from Pillai & Co., the last of these letters being dated 5th August 1965.

On the 19th July 1965 the defendant firm formally served on J.T.C.Y. & Co. two notices of withdrawal in respect of their two pending appeals to the Federal Court which had been listed as Federal Court Civil Appeal No. 33 of 1965 and Federal Court Civil Appeal No. 48 of 1965. The position governing these two appeals

is covered by rule 10 of the Federal Court (Civil Appeals) (Transitional) Rules 1963 the material provisions of which are as follows:—

"10. (1) An appellant may at any time before his appeal is called on for hearing serve on the parties to the appeal a notice to the effect that he does not intend further to prosecute the said appeal.

(3) If all parties to the appeal consent to the intended withdrawal of the appeal, the appellant may file in the registry the document or documents signifying such consent and signed by the parties or by their solicitors, and the appeal shall thereupon be deemed to have been withdrawn and shall be struck out of the list of appeals by the registrar. In such event any sum lodged in court as security for the costs of the appeal shall be paid out to the appellant.

(4) If all the parties do not consent to the intended withdrawal of the appeal, the appeal shall remain on the list, and shall come on for the hearing of any issue as to costs or otherwise remaining outstanding between the parties, and for the making of an order as to the disposal of any sum lodged in court as security for the costs of the appeal."

As the plaintiff company had not consented to the intended withdrawal of these two appeals (Nos. 33 and 48 of 1965) by the defendant firm they remained on the list of appeals to the Federal Court and were duly listed for hearing in September 1965. On the appointed day the respondent in these present proceedings appeared as counsel or advocate for the plaintiffs/respondents and Mr. Narayanasamy, an advocate and solicitor, appeared as counsel or advocate for the defendants/appellants.

Mr. Narayanasamy had, according to the evidence before the disciplinary committee, been requested to so appear by a clerk of the firm of Pillai & Co. as Mr. Pillai of that firm was not available. This request was made to him in the Supreme Court building at 9.30 a.m. the same morning whilst he was waiting to attend before a judge of the High Court in another matter. Mr. Narayanasamy agreed and was handed two bundles of files by the clerk and instructed to withdraw appeals Nos. 33 and 48 of 1965 and to object if the respondent, acting for the plaintiffs/respondents in these two appeals, asked for costs.

Before Mr. Narayanasamy proceeded to attend the High Court to deal with his own matter, he met the respondent and asked the respondent not to do anything before the Federal Court if he was late as he was appearing before Ambrose J. The respondent replied that all that would happen was to fix a date for hearing and offered to fix a date to suit Mr. Pillai. Mr. Narayanasamy however was not late for the Federal Court and when appeal No. 33 was called he applied to the Federal Court for leave to withdraw the appeal. The respondent asked for an order for costs and he opposed this application. At this stage Pillai & Co.'s clerk was beside him telling him "no costs, no costs" and he was himself trying to look through the files handed to him. A discussion then arose between counsel and the bench whether costs should be awarded and as to the amount and Tan Ah Tah Ag.C.J., the presiding judge, then sought the views of the other members of the Bar who were present in court and differing opinions were expressed.

At this stage, according to the respondent, Tan Ah Tah Ag.C.J. then remarked that one outstanding factor was that the respondent had to attend court and that had there been a written request for the respondent's consent to withdraw the appeal, the respondent would not have to attend.

Then Tan Ah Tah Ag.C.J. asked Mr. Narayanasamy if there was any written request asking for the other party's consent to the withdrawal of the appeal. Mr. Narayanasamy after looking through the files replied that he was not sure whether any letter had been written or not. There is a conflict of evidence here because, according to the respondent, Mr. Narayasamy replied that so far as he was aware there had not been any such written request.

According to Mr. Narayanasamy, the Acting Chief Justice then asked the respondent whether any letter was written by Pillai & Co. to which the respondent replied to the effect that no letter was written by Pillai & Co. On this crucial point the respondent's version differed from that of Mr. Narayanasamy. According to the respondent, the Acting Chief Justice on Mr. Narayanasamy's reply, then asked him "if that was so" and he mistakenly confirmed it was so, so far as he was aware, relying on Mr. Narayanasamy's perusal of the files.

The Federal Court then dismissed the appeal and by a majority of two to one, made an order for costs against the defendants/respondents and fixed it at $50. When appeal No. 48 was later called on and withdrawn no order of costs was made by the court. The following day, 14th September 1965, Pillai & Co. addressed a letter to the Registrar of the High Court in the following terms:—

"Federal Court Civil Appeals Nos. 33 & 48 of 1965

Universal Service Agency (sued as a firm)

Appellants

And

United Investment & Finance Limited

Respondents

We are acting for Universal Service Agency the appellants in the above two appeals, and Messrs. J.T.C.Y. & Co., are acting for United Investment & Finance Limited the abovenamed respondents.

On instructions from our clients we filed notices of withdrawal in the above two appeals which came for hearing on the 13th day of September, 1965. We herewith enclose a copy of press report of the hearing of the two appeals.

In this connection we have to bring to your kind information that in the absence on leave of our Mr.

J. L. R. Pillai who was in charge of the above two appeals, Mr. M. N. Samy was requested to appear before the Court of Appeal for the purpose of withdrawing the above two appeals.

During the hearing when the Honourable Mr. Justice Tan Ah Tah, the Acting Chief Justice, who president enquired from Mr. J.T.C.Y. who appeared for the respondents whether the appellants had earlier informed him about withdrawing the appeal and asked his consent on paper, Mr. J.T.C.Y. confirmed that the appellants had not asked his 'consent' on paper so that he need not turn up today. In the circumstances the court awarded him $50 as costs.

In this connection we herewith enclose photostat copy of our letter dated the 12th day of July, 1965, and photostat copy of letter dated 13th day of July, 1965, received by us from Messrs. J.T.C.Y. & Co., for your kind information.

In view of the above two letters Mr. J.T.C.Y. as a member of the legal profession made a false statement to the Honourable The Acting Chief Justice for the purpose of getting costs and we humbly submit that his conduct is grossly improper in the discharge of his professional duty. We humbly request you to place this complaint before the Honourable The Judges who presided the Court of Appeal on the 13th September, 1965."

On the 20th September 1965, appeal No. 33 was again listed for hearing before the Federal Court and it is safe to assume that this appeal was resuscitated by the court as a result of the letter of the 14th September. The respondent and Mr. Narayanasamy again appeared before the Federal Court on that day. When the appeal was called on, the respondent addressed the court and argued that he was entitled to more than the $50 costs awarded by the court a week ago. The Acting Chief Justice then put a question to the respondent who answered the question. Here again there is a conflict between the respondent's version and Mr. Narayanasamy's version. According to the respondent (and I quote from a letter dated 16th December 1965 by the respondent to the Bar Committee) :—

"The first thing I did was to tell the court that since the first hearing I had discovered a number of things, *inter alia*, the written request which I had unwittingly forgotten. Mr. Justice Tan Ah Tah then told me that at the first hearing (i.e. on the date of the fixing of the Federal Court case) when he queried whether there was a written request made by Messrs. Pillai & Company. I answered in the negative. I tried to explain to his Lordship that in fact the first of such question was directed to Mr. M. N. Samy while he was still standing and that Mr. M. N. Samy had answered in the negative first. However, this explanation had unfortunately caused a misunderstanding that I was trying to deny that I had confirmed Mr. M. N. Samy's negative reply."

Mr. Narayanasamy's version was that the Acting Chief Justice asked the respondent whether he (the Acting Chief Justice) had asked him (the respondent) on the previous hearing whether he had received a letter from Pillai & Co. and he (the respondent) had denied. The respondent in reply said that he could not remember. Thereupon the Acting Chief Justice told the respondent that the court did not want to hear him further.

A disciplinary committee was appointed by the Chief Justice to hear and investigate the complaint against the respondent contained in Pillai & Co.'s letter of the 14th September 1965 to the registrar, which letter together with its enclosures had, at the direction of Tan Ah Tah Ag.C.J., been forwarded to the then bar committee for action to be taken under section 27 of the Advocates and Solicitors Ordinance (Cap. 188). The gravamen of the complaint was that the respondent had on 13th September 1965, as an advocate and solicitor, made a false statement to the Federal Court for the purpose of obtaining costs which he was otherwise not entitled to.

The disciplinary committee sat on the 3rd September 1966 and gave certain directions as to the filing and exchange of "pleading" and of agreed bundles of correspondence and documents. According to the "pleadings", the charges against the respondent were that on two occasions of the sittings of the Federal Court on the 13th and 20th September 1965 the respondent made false representations to or otherwise falsely misinformed the Federal Court with regard to certain matters relating to Federal Court Civil Appeals Nos. 33 and 48 of 1965.

The first charge was that on the 13th September the respondent in reply to a question put to him by Tan Ah Tah Ag.C.J. informed the Federal Court that he, meaning his firm, had not received any letter from Pillai & Co. asking for his firm's consent to the withdrawal of appeals Nos. 33 and 48 of 1965 and that this reply was false to the knowledge of the respondent.

The other charge was that on the 20th September the respondent, when asked by Tan Ah Tah Ag.C.J. whether the Acting Chief Justice had asked him on the 13th September whether he had received a letter from Pilai & Co. and in response to which he had then denied, replied that he could not remember and that this reply was false to the knowledge of the respondent.

The disciplinary committee heard evidence on the 25th October 1966 and on the 21st December 1966, they recorded their findings in relation to the facts of the case and their opinion as to the conduct of the respondent in the form of a report. They found as a fact that:—

"From the tone and nature of the correspondence which consisted of six letters for the period from 12th July, 1965 to 5th August, 1965 (inclusive) relating to the withdrawal of the appeals and from the fact that J.T.C.Y. & Co. wrote to Pillai & Co. a carefully considered and calculated letter dated the 13th July 1965 demanding certain specific terms and conditions for the withdrawal of the appeals the letter dated the 12th July 1965 from Pillai & Co. could not have escaped the memory of J.T.C.Y. when he was asked by Mr. Justice Tan Ah Tah whether any letter had been written by Pillai & Co. to J.T.C.Y. & Co. regarding the withdrawal of the appeals."

They also found that the respondent:—

"Knowing that there has been a notice in writing from Pillai & Co. to his firm J.T.C.Y. & Co. of their intention to withdraw the appeal, on inquiry from Mr. Justice Tan Ah Tah had replied or given the impression that no such letter had been written by Pillai & Co. about the withdrawal of the appeal."

They were accordingly of the opinion that the respondent "had been guilty of grossly improper conduct in the discharge of his professional duty in that he had wilfully or rashly misled the court" into believing that Pillai & Co. had not written to J.T.C.Y. & Co. notifying Pillai & Co.'s intention to withdraw the appeal.

It will be seen therefore that the disciplinary committee made no finding with regard to the charge arising out of the proceedings before the Federal Court on the 20th September 1965 and gave no opinion as to the conduct of the respondent on that occasion and we accordingly propose to deal with the present application, as indeed have counsel representing the respondent and the Advocates and Solicitors Society, on the basis of the report of the disciplinary committee.

We have set out at length and in great detail the matters that are relevant because in our opinion it is essential that any tribunal enquiring into the conduct of a practising member of the legal profession should arrive at a determination on a full consideration of all the available material before it. It is also, in our opinion, necessary for such a tribunal to be satisfied upon the evidence placed before it that a specified charge which the practising advocate and solicitor has been required to meet has been made out.

Having regard to these considerations we are not satisfied on the evidence that the respondent wilfully misled the Federal Court into believing that Pillai & Co. had not written to his firm to notify his firm of the intention of Pillai & Co.'s clients to withdraw the two appeals. We have come to this conclusion because of the protracted correspondence between them, which correspondence dealt also with matters other than the withdrawal of these two appeals. Another reason is the discussion that took place in the High Court building between the respondent and Mr. Narayanasamy which, in our opinion, supports the respondent's version that he was expecting to do nothing before the Federal Court on the 13th September other than to obtain an appointed date when the two appeals would be dealt with. It was never in dispute that he did not have with him in court the files relating to these appeals and that this was his first experience before the Federal Court. His explanation before the disciplinary committee and earlier on to the bar committee is simply that he had forgotten about the letter from Pillai & Co. and having regard to all the material before us it seems to us that we ought not to reject it unless we are satisfied that the explanation is untrue or incapable of belief.

We are fortified in the view we take because of the ambiguous nature of the disciplinary committee's finding which was that the respondent had "wilfully or rashly" misled the Federal Court. This finding would appear to be inconsistent with the disciplinary committee's other finding that the respondent "knowing that there has been a notice in writing from Pillai & Co. to his firm J.T.C.Y. & Co. of their intention to withdraw the appeal, on inquiry from Mr. Justice Tan Ah Tah had replied or given the impression that no such letter had been written by Pillai & Co. about the withdrawal of the appeal". Moreover this finding of "knowledge" was merely an inference made by the disciplinary committee from the "nature and tone" of the correspondence between the two solicitors' firms between 12th July and 5th August 1965. It would seem, therefore, that the disciplinary committee had some doubts about their finding of "knowledge".

With regard to the charge relating to the proceedings before the Federal Court on the 20th September the available evidence seems to us to be so scanty that it would in our opinion be wrong to find the respondent guilty of grossly improper conduct in the discharge of his professional duties on such scanty evidence.

In the result we would make no order on the application. As regards costs we need hardly add that we would make no order because these proceedings could have been avoided had the respondent, when before the Federal Court on the 20th September 1965, tendered an unqualified apology for his unfortunate lapse of memory a week previously.

Order accordingly.

YAP SUAT TEE & ORS. v. COLLECTOR OF LAND REVENUE

[Appeals Board (Choor Singh J., Commissioner of Appeals) June 1, 1968]

[Singapore — Interlocutory Application No. 1 of 1967]

Land Law — Land acquisition — Land acquired for public purpose — Acquisition before coming into force of Act — Transitional provisions — Solicitors misconstruing procedural provisions — Notice of appeal not lodged in time — Deposit lodged in time — Whether right of appeal extinguished — Whether delay reasonable — Construction of transitional provisions — Land Acquisition Act, 1966, ss. 23, 54 — Land Acquisition (Appeals Board) Regulations, 1967.

Practice and Procedure — Absence of procedure — Incorrect form — When decided on merit — Duty of appellate court.

This was an interlocutory application made by the appellants under regulation 8 of the Land Acquisition (Appeals Board) Regulations 1967 for permission to proceed with the appeal by virtue of section 23(3) of